

In the High Court of Punjab and Haryana at Chandigarh

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RSA No. 297 of 2016 (O&M)

Date of decision: 16.10.2018

MUNISH KUMAR @ MUNISH SHARMA

.....appellant

Versus

GURBAX CHAUDHARY

.....respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Kuldeep Sanwal, Advocate,
for the appellant.

RAJ MOHAN SINGH, J.(oral)

Defendant is in regular second appeal against the concurrent judgments and decrees passed by the Courts below.

Plaintiff filed a civil suit for permanent injunction on the ground that he is owner of the shop in dispute along with Baldev Raj. Shop No.14 is situated adjoining to the property which is in possession of the plaintiff. The shop was purchased by the plaintiff from his father Ram Parkash vide transfer deed dated 5.10.2005. Plaintiff further alleged that the portion shown in light green colour was given to Ram Parkash, father of the plaintiff and the portion shown in pink colour was given to Nihal Chand, co-sharer in the partition proceedings. Defendant

claims himself to be a tenant in the shop shown in green colour under Baldev Raj. Injunction was sought against the defendant restraining him from making any hole in the common wall 'CD' between the shop in dispute. The adjoining shop is in possession of the plaintiff.

The defendant contested the suit by taking the plea that the plaintiff is not owner in possession of the shop No.14. The transfer deed dated 5.10.2005 was also claimed to be wrong and there was no partition vide judgment and decree dated 9.5.1994. The defendant even denied the site plan attached with the suit. The factum of partition between father of the plaintiff and Nihal Chand was also denied by the defendant.

Both the parties went to trial on the issues so framed by the trial Court. With reference to evidence on record, partition between father of the plaintiff and Nihal Chand was proved. Transfer of the property from father of the plaintiff to the plaintiff vide transfer deed dated 5.10.2005 was also proved. It was held that the defendant being a tenant has no right to impair value and utility of the property without adopting due course of law.

The findings of fact recorded by both the Courts below are based on appreciation of evidence. Re-appreciation of evidence cannot be done in the second appeal. The findings

recorded by the Courts below are not found to be perverse and as a result of misreading of evidence by any stretch of imagination .

No question of law worth cognizance is involved in the present appeal. The appeal is devoid of merits and the same is accordingly dismissed in limine.

October 16, 2018
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking

Yes/No

Whether reportable

Yes/No